

# Governance & Bylaws: What Has Changed?

- Grid West is moving forward, but the circumstances have changed
  - The continuing funders plan to move forward with Grid West without depending on BPA to participate as a transmission owner
  - Assuming it is technically feasible to move forward, Grid West expects that only six or seven of the prior funders will continue
  - This means that Grid West will have fewer dollars available to fund its development
- These are some of the reasons we need to reexamine the bylaws

# Governance & Bylaws: What Changes Are Needed?

- Current bylaws provisions assume that Grid West will not move forward without BPA signing a Transmission Agreement to become a participating transmission owner
  - These provisions no longer fit
- The legal separation of developmental and operational stages was designed to assure BPA and its customers that BPA would not come under expanded FERC jurisdiction by participating in Grid West development
  - These provisions are no longer needed to address these concerns

# **Key Provisions Built Around BPA Participation**

- Elections to seat the Developmental Board cannot proceed unless BPA signs a “Funding Agreement”
- Grid West cannot initiate its Operational Stage unless BPA signs a Transmission Agreement

# Key Provisions Built Around BPA Participation

- “Sunset” clauses require the Developmental Board to propose dissolution of Grid West if certain benchmarks are not met
  - BPA controls whether we reach the necessary benchmarks
- “Poison pill” provisions in the Developmental Bylaws void Grid West actions or force dissolution if FERC asserts jurisdiction

# Do the Sunset Clauses and Poison Pill Still Make Sense?

- Considerations about the “sunset” clauses:
  - The Grid West independent board will have developmental funding for a set period (expected to be two years or less)
  - If Grid West does not complete development within that time, it will die a natural death unless it can attract additional funding
  - Mandatory dissolution provisions are extremely unusual and not necessary under corporate law

# Do the Sunset Clauses and Poison Pill Still Make Sense?

- Changed Circumstances Related to Poison Pill:
  - The continuing funders believe the Grid West design can work without BPA as a participating transmission owner
  - FERC Declaratory Order of July 1, 2005:
    - Neither membership nor execution of a Transmission Agreement with Grid West will result in FERC jurisdiction for BPA or any transmission owner that is not subject to FERC jurisdiction under Section 205 of the FPA
    - Grid West's proposals can be reviewed as proposals for a transmission provider under Order 888; Grid West does not have to meet Order 2000 requirements

# Do the Sunset Clauses and Poison Pill Still Make Sense?

- Changed Circumstances Related to Poison Pill:
  - The Energy Act of 2005 has provided additional protections to stakeholders
    - A Federal Utility's participation in a Transmission Organization does not give FERC any jurisdiction over federal power marketing activities or electrical generation facilities. (§ 1232(d))
    - Exercise of rights needed to meet load service obligations will not be deemed undue discrimination or preference. (FPA § 217(k))
    - The Act does not give FERC authority to require utilities in the Pacific Northwest or adjacent areas within the footprint proposed for RTO West (and now Grid West) to convert to tradable or financial rights. (FPA § 218(b))

# Other Issues

- Discussions of Grid West governance have often focused on balancing board independence with regional accountability
  - There is a range of views among stakeholders about where the proper balance lies
  - Some question whether the current bylaws are so process-heavy that we have sacrificed workability and increased costs without any meaningful gain in accountability
- Should we review the bylaws' aggregate process requirements?

# Other Issues to Consider

- Do we need two separate sets of bylaws?
  - Could the Operational Bylaws serve as the basis for one governance structure?
  - How do the current Operational Bylaws provide accountability and protect members?
    - See separate summary outlining numerous provisions

# Other Issues to Consider

- We should clarify that the TSLG Basic Features are the focus of Grid West development and Transmission Agreement negotiations
- We should revisit the MTU class definition and voting power allocation
- Are there other issues?